

FCC MAIL SECTION

Before the
Federal Communications Commission
Washington, D.C. 20554

DISPATCHED BY
MM Docket No. 92-66

In the Matter of

Amendment of Section 73.202(b), RM-7940
Table of Allotments,
FM Broadcast Stations.
(Sun City, Arizona)

NOTICE OF PROPOSED RULE MAKING

Adopted: March 24, 1992; Released: April 8, 1992

Comment Date: May 29, 1992

Reply Comment Date: June 15, 1992

By the Acting Chief, Allocations Branch:

1. Before the Commission for consideration is the petition for rule making filed on behalf of Resource Media, Inc. ("petitioner"), licensee of Station KONC-FM, Channel 292A, Sun City, Arizona, requesting the substitution of Channel 292C2 for Channel 292A and modification of its license to specify operation on the higher class channel. Petitioner failed to state its intention to apply for Channel 292C2, if allotted to Sun City, and is requested to do so in its comments.

2. A staff engineering analysis reveals that the site specified by the petitioner would place the transmitter for Channel 292C2 a distance of 42.3 kilometers north of the community.¹ Additionally, since Sun City is located within 320 kilometers (199 miles) of the Mexican border, the Commission must seek concurrence of the Mexican government in this proposal.

3. Although the petitioner's specified site complies with the minimum distance separation requirements of the Commission's Rules, we question whether the proposal would observe the technical requirements of Section 73.315 which requires that a 70 dBu contour encompass the entire proposed community of license from the transmitter site. A staff engineering analysis reveals that the

average terrain elevation at the petitioner's intended site is 779 meters above mean sea level ("AMSL"). A conventional Class C2 station, operating at maximum facilities, would utilize an antenna height above average terrain ("HAAT") of 150 meters and an effective radiated power (ERP) of 50 kW. From the petitioner's intended site, it will be necessary for the station to operate at maximum Class C2 facilities in order for the 70 dBu signal to extend far enough in the direction of Sun City to encompass the entire community. Therefore, at the petitioner's intended site, the antenna radiation center would be 929 meters AMSL ($779 + 150 = 929$). We have determined that the ground level at the petitioner's specified site is 682 meters AMSL. Therefore, in order to attain an antenna radiation center of 929 meters AMSL, the antenna for Channel 292C2 must be 247 meters (810 feet) above ground level ("AGL") at the specified site ($682 + 247 = 929$). Conversely, we find that petitioner's proposed use of a 185 meter above ground level antenna at its specified site would result in an overall antenna height of 867 meters AMSL ($682 + 185 = 867$). As a result, the antenna radiation center would not exceed 88 meters HAAT ($867 - 779 = 88$). Combining an effective radiated power of 50 kW, with an antenna HAAT of 88 meters from the proposed site will not enable the 70 dBu signal to extend over the entire community of Sun City.

4. In view of the above, our evaluation of the petitioner's proposal, as presented, has preliminarily determined that a 70 dBu contour would not encompass Sun City from the specified site. Therefore, since the provision of a city-grade signal is an important public interest consideration, petitioner is requested to provide additional information in its comments to establish a *prima facie* showing of its ability to comply with the requirements of Section 73.315 of the Commission's Rules. If petitioner intends to pursue its specified site, it should also include evidence of FAA clearance for a tower of 247 meters (810 feet) at that location, as discussed above. Failure to provide the requested information could result in a denial of the proposal.

5. We believe the public interest would be served by proposing the substitution of Channel 292C2 for Channel 292A at Sun City, Arizona, since it could provide the community with an expanded coverage area FM service. As requested, we shall tentatively propose to modify the petitioner's license for Station KONC-FM to specify operation on Channel 292C2 in lieu of Channel 292A. Pursuant to the provisions of Section 1.420(g) of the Commission's Rules, we will not accept other expressions of interest in the use of Channel 292C2 at Sun City, or

¹ Coordinates at the petitioner's specified site for Channel 292C2 are 33-58-30 and 112-20-08. Since the petitioner's designated site is located farther from Sun City than the maximum distance (32.6 kilometers (20.2 miles)) the Commission normally assumes for the provision of city-grade coverage (3.16 mV/m), petitioner provided engineering information asserting that its proposal could comply with Section 73.315 of the Commission's Rules, based on actual terrain characteristics. In this regard, petitioner advises that the average terrain elevation at its proposed site is 779.4 meters. Based upon FAA approval of a tower 185 meters (607 feet) AGL (938.5 meters (3079 feet) AMSL), petitioner claims that the use of a tower 150 meters HAAT will extend the 70 dBu signal a distance of 46.7 kilometers on a bearing of 170 degrees, thereby encompassing the entire commu-

nity of Sun City. See *Woodstock and Broadway, VA*, 3 FCC Rcd 6398 (1988). Petitioner advises that the average terrain and contour distance calculations are based on the NGDC 30 second terrain database and the Commission's F(50,50) curves. See Sections 73.313(d)(1)-(3) and 73.333.

Petitioner also advises that it has obtained reasonable assurance from the Arizona State Land Department that the intended site is available for a commercial lease, and, that they would consider an application for its use as a communications site.

require the petitioner to demonstrate the availability of an additional equivalent class channel for use by such parties.

6. Accordingly, we seek comments on the proposed amendment to the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, with respect to the community listed below, as follows:

City	Channel No.	
	Present	Proposed
Sun City, Arizona	292A	292C2

7. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein. In particular, we note that a showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be allotted.

8. Interested parties may file comments on or before **May 29, 1992**, and reply comments on or before **June 15, 1992**, and are advised to read the Appendix for the proper procedures. Comments should be filed with the Secretary, Federal Communications Commission, Washington, D.C. 20554. Additionally, a copy of such comments should be served on the petitioner's counsel, as follows:

Thomas J. Hutton, Esq.
Nancy L. Wolf, Esq.
Dow, Lohnes & Albertson
1255 - 23rd Street, NW
Washington, D.C. 20037.

9. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules. See *Certification that Sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend Sections 73.202(b), and 73.606(b) of the Commission's Rules*, 46 FR 11549, February 9, 1981.

10. For further information concerning this proceeding, contact Nancy Joyner, Mass Media Bureau, (202) 634-6530. For purposes of this restricted notice and comment rule making proceeding, members of the public are advised that no *ex parte* presentations are permitted from the time the Commission adopts a Notice of Proposed Rule Making until the proceeding has been decided and such decision is no longer subject to reconsideration by the Commission or review by any court. An *ex parte* presentation is not prohibited if specifically requested by the Commission or staff for the clarification or adduction of evidence or resolution of issues in the proceeding. However, any new written information elicited from such a request or a summary of any new oral information shall be served by the person making the presentation upon the other parties to the proceeding unless the Commission specifically waives this service requirement. Any comment which has not been served on the petitioner constitutes an *ex parte* presentation and shall not be considered in the proceeding. Any reply comment which has not been

served on the person(s) who filed the comment, to which the reply is directed, constitutes an *ex parte* presentation and shall not be considered in the proceeding.

FEDERAL COMMUNICATIONS COMMISSION

Michael C. Ruger
Acting Chief, Allocations Branch
Policy and Rules Division
Mass Media Bureau

APPENDIX

1. Pursuant to authority found in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61 0.204(b) and 0.283 of the Commission's Rules, IT IS PROPOSED TO AMEND the FM Table of Allotments, Section 73.202(b) of the Commission's Rules and Regulations, as set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached.

2. *Showings Required.* Comments are invited on the proposal(s) discussed in the *Notice of Proposed Rule Making* to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed allotment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. *Cut - off Procedures.* The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (See Section 1.420(d) of the Commission's Rules.)

(b) With respect to petitions for rule making which conflict with the proposal(s) in this *Notice*, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.

4. *Comments and Reply Comments; Service.* Pursuant to applicable procedures set out in Sections 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached. All submissions by parties to this proceeding or by persons acting on behalf of such parties must be made in written comments.

reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. (See Section 1.420(a), (b) and (c) of the Commission's Rules.)

5. *Number of Copies.* In accordance with the provisions of Section 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. *Public Inspection of Filings.* All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street N.W., Washington, D.C.